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## ELECTION COMMISSION, INDIA

### NOTIFICATION

*New Delhi, the 8th January, 1953*

**S.R.O. 111.**—WHEREAS the election of Shri Paga Pulla Reddy as a member of the Legislative Assembly of the State of Hyderabad from the Alampur-Gadwal Constituency of that Assembly has been called in question by an election petition (Election Petition No. 134 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act (XLIII of 1951) by Shri Vijayamohan Reddy C/o Shri Manohar Rai Saxena, B.A., LL.M., High Court Pleader, H. No. 118/119, Khazana Julpalli, Inside Aliabad, Hyderabad Dn.;

AND WHEREAS, the election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL: SECUNDERABAD: DECCAN.**

*Friday the 2nd day of January 1953*

PRESENT: Shri S. Taki Bilgrami, Bar-at-Law, *Chairman Election Tribunal.*

Shri N. Kumarayya, H.C.S., *Member of the Election Tribunal.*

Shri Srinivas Raghava Charl, B.A., B.L., *Member of the Election Tribunal.*

**ELECTION PETITION No. 1 of 1952.**

Vijaya Mohan Reddy, son of Tirmal Rao, aged 26 years, caste Hindu, resident of Gadwal Town, a candidate for the Hyderabad State Legislative Assembly from Gadwal and Alampur Constituency.—*Petitioner.*

*Versus*

1. Paga Pulla Reddy, s/o Ram Reddy, aged 30 years, congress office, Gadwal,
2. Naganna, s/o Jammanna, aged 30 years, Lingnavai, Alampur Taluq,
3. Narsingh Bhan Singh, s/o Balaji Singh, aged 39 years, Pleader, Gadwal.
4. T. Chandrasekhar Reddy, s/o Venkat Reddy, aged 33 years, Alampur,
5. Jammanna s/o Karanna, aged 29 years, Lingnavai, Alampur Taluq,
6. Vakil Tippa Reddy s/o Tulsi Reddy aged 32 years, Gadwal.—*Respondents.*

This petition coming on 18th, 19th, 20th, 22nd 23rd, 24th, 26th and 27th December, 1952 for final hearing before us, S. Taki Bilgrami, Bar-at-Law,

Chairman, Election Tribunal, N. Kumarayya, H.C.S., Member of Election Tribunal, and Srinivasa Raghava Chary, B.A., B.L., Member of the Election Tribunal, in the presence of Shri Lal Bai M. Zaveri and Shri Saxena, Advocates, for petitioner, and of Shri B. V. Subbarayadu, M.A., LL.B., advocate for respondent No. 1 and Shri V. Venkateshwarlool, B.A., LL.B., advocate for respondent No. 1 and 2 Shri Mohd. Ali Hussain Vakil for Respondents 1 & 6 and Respondents 3 & 5 declared *ex-parte* and having stood over for consideration till this day, the tribunal passed the following:—

#### ORDER

The facts which have led to this election petition are briefly as follows. During the last general Elections the Alampur Gadwal constituency was called upon to return two members for the Hyderabad Legislative Assembly—one for the General Seat and the other for the Reserved Seat for the scheduled caste. The respondents Nos. 1 and 2 respectively are the returned candidates for these two seats. The other duly nominated candidates for the General Seat were the respondents 3, 4 & 6 and that for the reserved seat was respondent No. 5. Respondent No. 6 withdrew within the prescribed time. Vijay Mohan Reddy the petitioner was also a candidate for the General Seat, but the two nomination papers filed by him were rejected by the Returning Officer on the ground that the proposer and the seconder are precluded by law to subscribe to more than one nomination paper, and that this invalidates both the nomination papers. This petition, therefore, now seeks to set aside the election through this petition, claiming that the improper rejection of his nomination papers has materially affected the result of the election.

The respondents Nos. 1 and 2 who filed their written statement justifying the decision of the Returning Officer have opposed this petition on more than one ground. Their contention is that the candidate, his proposer and his seconder are not the same persons as described in the Electoral Roll of the constituency. The petitioner's natural father's name is Tirmal Reddy and not Tirmal Rao as mentioned in the Electoral Roll. His adoptive father is Somi Reddy, whose name as such does not find place in the roll at all. Further that the candidate is under age and hence disqualified for a seat in the Assembly. The proposer G. Nagappa Vakil and the seconder V. Satyanarayan Reddy are not the same persons as mentioned in the Electoral Roll on serial numbers 900127. One more objection raised by the respondents is that the candidate had not duly filled up the declaration form for appointing an agent, inasmuch as he did not write his own name or any other name as agent as required by law in the column concerned. The petitioner objects that the respondents are not entitled in law to take before this Tribunal any fresh objections not raised before the Returning Officer against the acceptance of the petitioner's nomination papers or those overruled by him. The following issues were framed:—

1. Are Respondents Nos. 1 and 2 competent to raise objection which were decided in favour of the petitioner by the Returning Officer and also those which were not raised by the Respondent before the Returning Officer
2. Whether the petitioner is the same person who is described Vijay Mohan Reddy on the Electoral Roll.
3. Whether petitioner possesses the necessary age qualification to contest for a seat in the Assembly.
4. Whether the petitioner's proposer and seconder are the same as those found in the Electoral Roll.
5. Whether the proposer and seconder are electors as per Electoral Roll.
6. Whether this Tribunal has jurisdiction to decide points either overruled or not raised before the Returning Officer.
7. Whether the nomination paper is void for non-declaration of the name of the Election Agent.
- 8 (a) Whether the nomination papers were improperly rejected
- 8 (b) Whether the rejection of the petitioner's nomination paper has materially affected the Election

We find it more convenient to amend issue No. 1 as follows:—

1. Are respondents Nos. 1 and 2 competent to raise objection which were decided in favour of the petitioner by the Returning Officer and also those which were not raised by the respondents before the Returning Officer, and has this Tribunal jurisdiction to decide these.

Our decision of this issue is as follows:—

In this trial of the Election petition, presented under section 81 R.P. Act, calling in question the election on the ground of improper rejection of nomination papers of the petitioner as specified in section 100(1) (c) R.P. Act and referred for trial to this Tribunal constituted under Section 86(1) of the said Act, we are called upon to decide whether we have jurisdiction to inquire into those objections which were not raised before the Returning Officer or which were overruled by him when they were raised. We make it clear that we are a judicial body and derive our power and authority from the provisions of the R.P. Act. Our procedure is regulated by the said Act and as a judicial body we are governed by the principles of justice, equity and good conscience of the court. We must form our independent judicial opinion as regards the grounds specified in Sections 100 and 101 R.P. Act on the basis of the pleadings and the evidence adduced. We know of no provision which places limitations on the scope of our full judicial inquiry as regards the grounds mentioned in 100 (c) of the R.P. Act, nor can our opinion be in any manner influenced by the result of the summary inquiry of the Returning Officer. It is evident from section 36 R.P. Act that the Returning Officer's inquiry is of a summary nature, the scope of which is limited to his own discretion. He can either on any objection raised or on his own motion refuse any nomination paper on certain grounds. He need not decide all objections if he finds one sufficient to reject the nomination paper. Such being the case, to give finality to the decision of the Returning Officer will be against the tenor and spirit of the Act and inconsistent with the principle of justice. His acceptance or rejection of the nomination paper is open to revision by the Tribunal, which has full powers to go behind the decision of the Returning Officer and decide the impropriety of rejection or acceptance and its consequences on the result of the election. We are supported in this view by the Jagatada Vs. Koite Case (Jagat Narayan Vol. IV, P. 22) and Moradabad District North West Muhammadan Rural constituency case of 1937 (Bashir Ahamed Vs. M. Akbar Hussain Khan and others—I.E.C. 1935-51, Sen and Poddar page 564).

Thus we cannot entertain the plea of the petitioner that the Tribunal has no powers to consider the objections overruled by the Returning Officer nor can we agree with the contention that no objections which were raised at the time of scrutiny can be considered in this first full judicial inquiry.

We are also of opinion that it is open to the party to set up his full defence against the claim of improper rejection of the nomination papers made through this election petition. The procedure in this regard is one laid down in the Civil Procedure Code subject to any relevant express provisions of the R.P. Act. The respondents can under Or. 8 Rule 1, C.P.C. file written statement, wherein they can raise all pleas legal or factual allowed by law, in the manner prescribed in the subsequent rules of the said order. All their pleas whether legal or factual must needs be considered judicially. The respondents plead that the grounds mentioned in the order of the Returning Officer are some of the many raised at the time of scrutiny, and at any rate they are not precluded from raising objections which were not raised at that time. The objections which they are raising now are only to meet the claim of the petitioner. In addition to the grounds mentioned in the order, they dispute the identity of the candidate and also the compliance with the formality of filling up the declaration form. These pleas do not partake of the nature of counter charges. They are not of a recriminatory nature to warrant recriminatory petition by the respondents with all its formalities. They are the pleas which are calculated to directly meet the case of the petitioner that the nomination papers were improperly rejected. These were the grounds that could be raised even before the Returning Officer. If he does not raise them before the said Officer on no principle of law is he precluded from raising them on the petition filed by the candidate. As observed in Mohan Lal Mandal Vs. Radhanath Das and others (Hooghly North East General Rural constituency 1946 I.E.C. Sen and Poddar page 388 at 393) want of objection to a nomination paper at the scrutiny does not estop the party from challenging the same before the Tribunal. In Panna Lal Vs. Mohan Lal (Punjab Legislative Council Punjab North East Case, I.E.R. Jagat Narayan Vol. II at page 145) the commissioners overruled the objection of the petitioner that the commissioners could not go into any question, on the basis of an objection not originally raised before the Returning Officer. It has been held in various cases that the validity of the nomination paper of a candidate is a matter which concerns not merely the petitioner but also other candidates as well, as other members of the electorate are interested in exercising or abstaining from exercising their right of franchise. Therefore it is open to a party, to challenge the validity of a nomination before the commissioners or the Tribunal even on ground not taken before the Returning

Officer or to challenge the validity even where no objection was raised at the time of the nomination. The right of objection to a nomination paper cannot be waived, nor is any estoppel created against a candidate by his not raising any objection at the time of nomination to the act of the Returning Officer (*Vide Bhandia Dist. Case I.E.P. Roll 4 page 23, Jagat Narayan*).

The petitioner's counsel in his argument conceded that the respondents are not estopped from taking objections other than those raised before the Returning Officer, but his contention was that they should raise these objections through a recriminatory petition. After perusal of section 97 R.P. Act we cannot agree that in this petition, which does not contain a claim for a declaration that any candidate other than the returned candidate has been duly elected, there can arise any question of recrimination. A recrimination according to the plain dictionary meaning is a counter charge to an accusation. We fail to understand how a pure and simple defence to the claim brought by the petitioner can be ranked as recrimination to need a recriminatory petition with all the formalities for acceptance. It is only the written statement that is required, to give expression to such objections and the R.P. Act provides for no other method or media. Under these circumstances we decide issue No. 1 in favour of the respondents. Having disposed of the legal issues we shall now proceed to deal with issues which involve questions of facts. It will be convenient to decide issues Nos. 2 and 3 together because the decision of one affects the other, and the evidence regarding them is the same. According to the respondent the petitioner is not the same Vijay Mohan Reddy whose name appears in the electoral roll. The petitioner, it is alleged, was born and educated outside Hyderabad State, his name was never on the roll, he wanted to stand as a candidate of P.D.F. from this constituency, and finding by a happy chance that on the electoral roll there was the name of one Vijay Mohan Reddy, s/o Tirmal Rao, he appropriated that name, and made an attempt to stand as a candidate and contest the election. The following facts are relied upon to support this allegation. (1) The name of the petitioner's adoptive father is Somreddy and that of his natural father Tirmal Reddy and not Tirmal Rao. (2) That the adoptive father of the petitioner resided in Block No. 17 and not in Block No. 4. (3) That the petitioner's full name is G. Vijay Mohan Reddy and he has always signed himself thus on other occasions. (4) That the age of the petitioner is not 26 years but 24. It is not denied by the petitioner that his adoptive father's name is Somreddy or Somanna, and that his natural father's name was Tirmal Reddy, but he says that he was also called Tirmal Rao. He also does not deny that he has on some occasions signed his name as G. Vijay Mohan Reddy. That letter G, he says, stands for Gadwal. He sometimes signs as G. Vijay Mohan Reddy and sometimes simply Vijay Mohan Reddy. Allegations regarding the age and residence are denied. It has been pointed out by the learned advocates of the respondents Messrs. Venkateshwar Rao, and Subbarayudu that in the electoral roll Bhimeshwar Reddy's father's name appears as Tirmal Reddy and he is a brother of the petitioner. It is argued that it is very unlikely that two brothers should put down different names of their father even if the father had two names. Our attention is further drawn to the fact that the petitioner has admitted that his father was the only member of the family who was a Rao and rest were all Reddys. It is asserted that among Reddys a person is never named Rao, and the petitioner has failed to point out a single other instance of a member of his family either in the past, or present, bearing the name of Rao, and this conclusively proves their allegation that the petitioner is not the same person whose name appears in the electoral roll. It is further argued that the best evidence to prove that the petitioner's father was also called Tirmal Rao, and that Gadwal was the family name, and the age, and identity of the petitioner was that of his own brother Bhimeshwar Reddy, or that of his own mother, or adoptive mother's. None of these were called. Bhimeshwar Reddy was actually present before the Tribunal during the trial, and he was not examined. A horoscope of the petitioner which would have been a very valuable evidence regarding both his age and identity was not produced, an adverse inference therefore, under section 114(g) of the Evidence Act will arise. We do not think that any of these factors taken singly or all together are sufficient by themselves to hold as established the respondents' allegations that the petitioner is not the same person whose name appears in the electoral roll. It is possible that a person should bear two different names, and his two sons may show in the electoral rolls different names. The fact that there is no other Rao in the family does not exclude the possibility of any one being called or named so. The custom that among a family of Reddys all members should be invariably named Reddy and a name of Rao can never be given to or assumed by any of the member is neither so well known as to be taken judicial notice of, nor has been proved to our satisfaction by any evidence. So far as not producing the petitioner's horoscope and his mother, and near relations on his behalf to establish his age and identity is concerned, we think that this undoubtedly

would have given rise to an adverse presumption but for the fact that he has relied on and produced other evidence which is equally strong and convincing. What we consider to be such evidence we shall relate presently. Before doing so we would like to point out what we consider as a fact having an important bearing on the point at issue. It is significant that the objection regarding the identity of the petitioner was not raised before the Returning Officer. The respondent personally know the defendant, he had closely examined the electoral roll, and had seen the name therein which the petitioner claimed to be his own or he would not have been in a position to raise no objection regarding the age and others which he did raise. The Tahsildar who gave the identity certificate was himself an Assistant Returning Officer, and if the objection regarding the identity was raised then, it could have been easily settled. The Officer under whose supervision the roll was prepared was there, and so was the person whose name the petitioner was trying to appropriate. It is difficult to conceive that if the petitioner was really not the person whose name was on the roll, and the respondent knew the petitioner why did he not raise this objection at the time of scrutiny. This, in our opinion, gives rise to a very strong suspicion that the objection is an after-thought and baseless. It is not fair in our judgment that a party should be permitted to reserve an objection for a later occasion when the opposing party would find it difficult to meet it, and not raise it when it could be easily decided. Leaving this out of consideration for the moment let us examine the evidence adduced by the parties in this regard. Let us consider the documentary evidence first, the respondent has filed what purports to be a certificate of the Tahsildar of Kurnool to the effect that there is no entry of the birth of the petitioner in Belagal village on 6th April, 1925. This is marked Ex-P-3, and is dated 21st December 1952. The Tahsildar who is supposed to have given this certificate was not examined, it bears no seal or certificate of the Magistrate that the Tahsildar has signed it in his presence. It does not fall under section 74 or 79 of the Evidence Act, and had to be proved like any other private document; and in absence of such proof is inadmissible. The petitioner to rebut this had produced a certificate of the Head-Master of the Kurnool Municipal High School, Ex-P-5 stating that the date of the birth of the petitioner; this also in our opinion, is inadmissible for the same reason. But apart from this the petitioner has filed two important documents one is a registered adoption deed dated 15th September 1947 by which the petitioner was given in adoption to Tirmal Rao and the other is the "Fort St. George Gazette" published by the authority of the Government of India Madras. In "Part I-B (Supplement) Educational" No. 45 dated 12th November 1940 in the final test of the certificate holders who appeared for the Public Examination in 1940 on page 2, serial No. 8642 appears the name of G. Vijay Mohan Reddy s/o Tirmal Rao. It is objected that the adoption deed was not proved as required under section 67 of the Evidence Act. The executor or the persons in whose presence it was signed were not produced, and therefore, it is inadmissible in evidence. This objection in our opinion is not correct. For regarding a registered document it has been held, that since at the time when it is admitted for registration, the Registering Officer has to endorse and certify that the executor of the document is admitted by the executant it may be taken to be proved without any independent proof of its execution. This view was taken by the Bombay High Court in "Vishwanath Ramji Karole Vs. Rahi Bai Rakni Karole 35 Bombay 103" and by the Lahore High Court in "Dist. Official Receiver" in 1941 Lah. 400, by Nagpur High Court in Ganpath Rao Vs. Naga Rao 1940, Nag. 382, by Oudh High Court in "Sarja Vs. Murlidar", 1936, Oudh 87 and by the Privy Council in "Ganga Maji Devi Vs. T. N. Choudhry", 33 Calcutta 537 and more recently in "Gopaldas Vs. Sri Thakurji" 1943, Privy Council 83. No doubt there are cases in which a contrary view has been taken but they cannot be followed in view of the Privy Council cases referred to above. This objection, therefore, is overruled and we have no hesitation whatever in holding that this document is admissible for the purposes for which it is tendered in this case. Even a certified copy of a registered document is sufficient for merely proving its existence, and contents and condition. In this document which is dated 15th September 1947 the age of the petitioner is given as 22 years, and his natural father's name as Tirmal Rao. The other document is a Government Gazette, a public document under section 74 of the Evidence Act and no proof of its contents are required. In this also the name of the petitioner's father is given as Tirmal Rao. This is of the year 1940 and it may be safely presumed that the petitioner was at least 14, when he passed the examination. It may be said, though it was not actually urged on behalf of the respondents, that there is no proof that the adoption deed and this entry in the Gazette relate to the petitioner. The respondent No. 1 himself admits in his counter that the petitioner was given in adoption to Somu Reddy by his natural father, it will be a very strange coincidence indeed if another person of the petitioner's name with parents having the same name were to give him in adoption to a person of the same name and place

of residence as to one to whom the petitioner was given in adoption. With regard to the name in the S.S.L.C. eligible list in the Gazette it may be mentioned that it was admitted by one of the witnesses of the respondent that Vijay Mohan Reddy a cook in the household of the Rani of Gadwal whose name in the electoral roll it is alleged the petitioner assumed for standing as a candidate had never been to school. No other Vijay Mohan Reddy, son of Tirmal Rao appears either in the electoral roll or his existence is proved by any evidence, and under these circumstances we think ourselves justified in presuming that the person whose name appears in the list is the petitioner. Under section 9 of the Evidence Act when the identity of a person is in question evidence of similarity of name and father's name and other circumstances of the like nature, are relevant and can be taken into account. See in this regard 1942 Calcutta 498—"Bihari Devi and Ramendra" Narain and Phipsons Evidence 714 Edition 132. The petitioner's evidence which is supported by this strong documentary evidence is not rebutted by the evidence of equal weight by the respondent. His statement that he remembers that the petitioner was born in Bangalore and that he knows his age because his birth day is celebrated every year and because he was born in the first year in the cycle of Telugu years is hardly worthy of credit. He could not have been more than 8 or 9 years of age when the petitioner was born, he says that birth-days of no other member of the family is celebrated. Why was the petitioner marked out for this special honour; he is unable to account for. If the respondent knew that the petitioner was born in Bangalore it was easy for him to establish, this by producing the birth register or its copy of that place. The petitioner is not an obscure person, he is related to the Rani of Gadwal and is well known both to the respondent and the people of that place, and very probably to all the Government Officials of the place. That he should be able to personate there, show his father's name different from what it was, is very difficult to believe. And much more so is the fact that the respondent who is also a distant relation of his did not immediately object before the Returning Officer. The other argument advanced on behalf of the respondent relating to the age is, that Bhimeshwar Reddy according to the petitioner's own statement is 2 or 2½ years older than he, and Bhimeshwar Reddy's age at the time of the preparation of the roll i.e., 1949 is set forth as 25 years, therefore petitioner cannot be 26 years of age in 1951, when the nomination papers were presented. Even according to this calculation the age of the petitioner could be 25 years at the time of the nomination paper was presented we do not see how this can help the respondent to establish his case. The respondent stated in cross-examination that the person whose name on the electoral roll the petitioner has appropriated is a relation of a cook in the house of the Rani of Gadwal, and is alive and may be still in Gadwal. The best way of rebutting the petitioner's evidence was to put this person in the witness box, but no attempt was made to do so. Some of the respondents' witnesses have said that this man has disappeared since the election but the respondent No. 1 says that he may be still there but he has not made any attempt to find out his whereabouts. This will give rise to adverse inference against him. So far as the argument based on initial 'G' being a part of the petitioner's name is concerned, we think that it is very common for a person sometime to use a certain initial in signing and giving his name, and not to do so at other times. Once the identity is established by other evidence such trivial discrepancies do not matter, and are not sufficient for rejection of a nomination paper; see in this regard "Sardar Harcharan Singh Vs. Jaldas Nathoo Ram Singh" (South East Punjab Sikh Constituency) in which it was held that a slight difference between the name of the candidate's father as found in a licence and that given in the electoral roll by the candidate as immaterial. In 'Sashihasham Vs. Ram Parsad' case No. 147-Doabin Election Cases a similar view was taken. In our judgment, for the reasons we have shown above the petitioner's identity in this case is established, and also the fact that his age given in the electoral roll was correct, and his nomination paper could not have been validly rejected on these grounds and we therefore, decide issue Nos. 2 and 3 in his favour.

The subject matter of the issue Nos. 4 and 5 being the same we shall consider them together. It is alleged by the respondent that G. Nagappa the proposer of the petitioner is not the same person whose name is found in the electoral roll, for his profession given in the nomination paper is Vakil and in the electoral roll he is shown as a School-Master; in the electoral roll the initial 'G' which appears in the nomination paper is not to be found. The petitioner has produced a certificate of the Munsiff Magistrate of Gadwal who is also the revising authority which shows that Magistrate after due inquiry has found that the initial 'G' with the proposer's name denotes "Gajala" and his full name is Gajala Nagappa and that he was formerly a teacher and is now a local legal practitioner, and that there is no other person of this name whose father's name is Veerappa in the locality i.e. Fort Block No. 4, Gadwal. Nagappa himself was produced as P.W. 3. He has

deposed to the same effect. The respondent himself in his statement says that G. Nagappa at the time when nomination paper was submitted, was a legal practitioner and before that a student of law and a teacher. He thus confirms Nagappa's statement. Electoral roll was prepared it must be remembered sometime previous to the election and the discrepancy relied upon by the respondent No. 1, therefore, is of no effect. In other respects also he does not rebut the evidence of Nagappa and the petitioner produced in this behalf which we find no reason to disbelieve. We, therefore, overrule this objection. With regard to Satnarayan Reddy it is alleged by the respondent in his counter that V. Satnarayan Reddy the seconder is a different person and not the same whose name appears as merely Satnarayan Reddy in Electoral Roll serial No. 12, residing in Block No. 7. Satnarayan Reddy himself was produced as P.W. 4 by the petitioner and he says that V. stands for Venkata-puram which is his Jagir. It is evident from his statement that he sometimes signs as V. Satnarayan Reddy. He has he says, in cross-examination obtained a Succession Certificate in the name of Satnarayan Reddy, and he is the same person. We have no reason to doubt this statement. He is also a well known person owning a Picture House and a Mill, and he resides as the respondent No. 1 has stated, in a house which is the next biggest to the Gadwal House. His father and other members of his family are Jagirdars from generations. Why his own name should not be in the roll and why he should have had to resort to pass himself as somebody else, whose name was there, it is difficult to understand. If he had done so it would have been very easy to prove. No rebutting evidence of this was produced. Merely pointing out use of a certain initial in one place, and omitting to do so in another is not sufficient. As we have shown while dealing with previous issues and citing authorities in support of this view that such trifling discrepancies are immaterial so long as identity is established. We hold, therefore, that there is sufficient evidence on record to satisfy us that the proposer and seconder of the petitioner are the same persons whose names appear in serial Nos (90) and (127) of the electoral roll, and they were electors and qualified under the law to propose and second the petitioner and therefore decide these issues also against the respondents and in petitioner's favour.

We shall now proceed to decide issue No. 7. It is objected by respondent No. 2 that under section 40 R.P. Act of 1951 specification of the name of an election agent is mandatory. The declaration form filed by the petitioner is defective in so far as it does not specify the name of the election agent. Rule 4 under the above Act enjoins that forms should be completed in accordance with schedule II. A form for declaration of an election agent, whether it be the candidate himself or any other person is given in that schedule and the foot note under the form makes it clear that it is imperative to specify the name of the person appointed. This is equally necessary whether the person appointed is some other person or the candidate himself. The petitioner has failed to do this, therefore, his nomination paper should be rejected on this ground. We cannot agree with this contention. We find that in the declaration form the petitioner has signed his full name Vijay Mohan Reddy and has stated above that he declares that he appoints himself as his election agent. This we consider as substantial compliance with section 40 R. P. Act of 1951, and Rule 4 of the Rules framed thereunder, and the schedule II. We are of opinion that all provisions regarding filling up of forms are merely directory and it is sufficient if they are obeyed substantially. They do not enjoin literal compliance and exact fulfilment. We are supported in this opinion by the decision in the following cases.

- (1) Waswa Singh Vs. Waryan Singh and others—Doabia Indian Election Petition, Vol II page 263
- (2) Gurubuksh Singh Vs. Baldeo Singh—Doabia Indian Election Cases—Vol I, page 13 at page 16.

In the above cases it has been held that what is required is not meticulous accuracy but substantial compliance. In the latter case cited above, the question was of compliance with a provision as in the present case, contained in the foot note. The learned Commissioner observed as follows:—

"We are of opinion that if the provision had been of such stringent character it would not have been relegated to a foot note."

The principle we think applies not only to the nomination forms but all forms, and if it is clear from the declaration form who is the person appointed as election

agent and there is no possibility of mistake, or ambiguity in this, the compliance with provision of the act and Rules relied upon by the respondent is sufficient. In this case petitioner has written his full name and made it clear that he is appointing himself as an agent. His nomination paper cannot be rejected, therefore on the ground urged by the respondents and we decide this issue also in favour of the petitioner.

Issue No. 8 (a).—We have got to consider now whether the rejection of the nomination paper of the petitioner by the Returning Officer was correct or not. G. Nagappa the proposer of the petitioner and Sathyanarayan Reddy his seconder it appears, filed on the date a, proposer and seconder on two nomination papers, and the Returning Officer being under the impression that this contravenes section 33(2) of R.P. Act of 1951 rejected them. We think that this rejection was based on a mis-apprehension of the meaning of the provision relied upon, and was wholly wrong. It is clearly laid down in section 33, clause (7) that nothing in this section shall prevent any candidate being nominated by more than one nomination paper for election of the same constituency. The matter came up recently before the Election Tribunal of Delhi in "Shri Hans Raj—Vs.—Ram Singh etc." Election Petition No. 2 of 1952. There one Shri Fatch Singh has filed 3 nomination papers and in 2 of those he was a proposer. All 3 nomination papers were rejected on the ground that he has subscribed to more than one, which is exactly the same ground as that on which the nomination papers had been rejected in the present case. It was held by the Tribunal that this rejection was wrong and that the Returning Officer was bound to hold the first nomination paper as valid. On the above ground we hold that the nomination paper of the petitioner was wrongly rejected.

Issue No. 8 (b).—Regarding this issue great deal of evidence was produced by the respondents. It is contended by the respondent that even if the petitioner was allowed to contest the election the result would have been the same. The respondents attempted to prove, and relied on the following grounds to establish this contention: (1) The strength of the congress in the constituency in question, (2) The personal popularity of P. Pulla Reddy, elected candidate of congress—respondent No. 1 in this case and (3) The total absence of all P.D.F. organisation in the constituency and obscurity and long absence of the petitioner. Altogether 12 witnesses were examined including the respondent No. 1 himself, some people belonging to the congress party, and holding high offices and positions including the Hon'ble the Chief Minister Mr. B. Ramkrishna Rao, and the present President of the Congress Shri Ramanand Thirth, and the Editor of "Golkonda" Mr. Pratab Reddy who is also a member of the Legislative Assembly. All these people have deposed that their impression is that in this particular constituency P.D.F. had no chance of winning the election. The influence of the Congress was wide spread and supreme there, and that this District has always been free from Telangana Communist activities. Hon'ble the Chief Minister has deposed that he can say for certain on the basis of information which he possesses as the Head of the State that there was at the time of election or later no secret communist activities in this part. Other witnesses have also deposed to the same effect. They have also said that P. Pulla Reddy, the respondent is extremely popular, and that he has taken part in the Congress activities from a long time. He has led the border struggle during the Razakar days. He is a secretary of the Local Congress and was a joint secretary of the State Congress too. On the other hand Vijay Mohan Reddy the petitioner is a man almost unknown in those parts, who has been long absent in Madras and other states and away from Gadwal and had taken no prominent part in any public or political activities which could make him wellknown or popular. It has been deposed by some of the witnesses that a very large majority of the Congress candidates have been elected in the local panchyats. In the adjacent constituency of Raichur District the congress have swept the polls. There is a congress majority in the Municipality also. We are prepared to believe all this which has been testified by some of the witnesses whose veracity is above question. Even granting all this to be true if we leave out of account personal opinion and impression of the witnesses we do not feel that we are in a position to predict with certainty that even if Vijay Mohan Reddy was allowed to contest this election he would have been defeated. We find that the independent candidates Shri T. Chandrasekhar Reddy and Jammanna who contested the election without any party organisation behind them, a person far less known than Vijay Mohan Reddy who has not taken even as much part in political activities as the petitioner polled 15667 votes against 20,000 and odd of the first respondent. We also find that in the adjacent constituency of Kolhapur a P.D.F. candidate succeeded with a considerable majority. It has been laid down in a number of cases that when any nomination paper is improperly rejected there will be a very strong presumption that the result of the election is materially affected. We completely agree with this view. Ordinarily we think that it is very difficult, if not impossible to predict what the result of the election would



have been if any particular candidate was allowed to contest the election. In any court or Tribunal empowered to adjudicate upon a matter of such public consequence and private importance it cannot be permitted that opinion should be formed on the basis of speculation, surmise and conjecture. This presumption of course is not irrebuttable. We cannot and do not wish to lay down as an invariable rule, admitting of no exception that whenever a nomination paper is improperly rejected the election should be wholly set aside and it should be presumed that this event has materially affected its result. This will be contrary to what appears to be the intention of the legislature as it appears in section 100(c). There would have been no need for providing that the tribunal should form its opinion regarding this question. But nevertheless the presumption is so strong that it can only be rebutted by very strong and convincing evidence. The cases in this regard are so numerous that it will serve no purpose to cite all of them. We shall content ourselves with citing a few. See "Amritsar Central (Sikh) constituency Sardarni Parkash Kaur Vs. Rao Bhadur Wasakha Singh," Sen & Poddar page 15 at page 17. It was held in this case, in which also a considerable amount of evidence has been produced by the respondent to show the likelihood of his being elected, that the presumption that the election is materially affected by rejection of a nomination paper of any candidate is so strong that it requires almost conclusive evidence to rebut it. A similar case is that of Basti Dist. North East General Rural Constituency, Sen & Poddar page 106 see page 110. See also 3 recent cases decided by the Delhi Tribunal. "Shri Suraj Bhan and others Vs. Shri Hemchand Jain and others," petition No. 3 of 1952 and "Bal Subramanyam Vs. Narsimha" and "Hansraj Vs. Ramsingh" page 2251 *Gazette Extraordinary*. It has been laid down in that case that an improper refusal is a grave irregularity and therefore the presumption of the result being materially affected is so great that the strongest and most conclusive evidence for its rebuttal is required and the burden of which lies heavily on the respondent. See also Doabia Vol 2, "Abdul Vs. Jathar Ahmed," the same Vol. Page 341 "Bashir Ahmed Vs. Akhtar Hussain Khan" at the same volume page 302 "Multan Division Towns constituency" in the latter it was held that if the nomination paper of a candidate is improperly rejected there is in the very nature of things the strongest possible presumption that the result of the election is materially affected as no one can possibly foresee what could have been the result if the candidate had been allowed to fight the election. The respondent has tried to show by his evidence that there was great enthusiasm for the congress after the visit of Pandit Jawaharlal Nehru, and a number of pamphlets were circulated, and a great deal of propaganda was done before the election, and there were no P.D.F. activities. This by itself is not sufficient. Keeping in view the principle laid down in all the decided cases referred to above, a principle which we feel is sound, and regarding correctness of which we are also convinced, we cannot say that all these factors that the respondent has tried to prove are sufficient to make us feel certain that if Vijay Mohan Reddy was allowed to go to the polls the result would have been exactly the same. It is not enough to prove that the petitioner would have failed if he had contested the election, but it must be established that the result would have been the same. All this can only be done in very rare circumstances, which we do not think exist in the present case. We therefore, decide this issue also against the respondent and in favour of the petitioner, and hold that as a consequence of the rejection of the petitioner's nomination papers the result of the election has been materially affected.

It has also been urged before us by Mr. Subbarayudu pleader of the respondent No. 1, that we are not competent to declare the whole election void firstly because the petitioner does not pray for it, and secondly because the wording of the Notification of the Election Commission appointing us members of the Tribunal is such that it does not confer such powers on us. So far as election petition is concerned the words in the prayer of the petitioner that we may declare "That the election to which the respondent No. 1 has been returned is wholly void," do not support this contention. Declaring an election wholly void does not mean avoiding the election only of respondent No. 1. With regard to terms of reference contained in the Notification, we do not think that they confine us to this limited scope as alleged by the respondent. It is inconceivable that a petition in which the ground for wholly avoiding elections are set out, should be referred to us, and the powers to pass the order necessary on the success of the petition should be withheld. We are unable to give this narrow interpretation to the wording of the notification suggested by the pleader of the respondent. The very reference for trial of this petition in our opinion, by implications confers on us powers to pass any order that is necessary under the provision of the Act, which we may be called upon to pass as a result of the trial of the petition.

In result we declare that the election to the Hyderabad Legislative Assembly from the constituency of Gadwal and Alampur is wholly void; as the election is

being upset without any fault of either of the parties and entirely due to the mistake of the Returning Officer, we order that the parties should bear their own costs.

Pronounced by us in open Court this 2nd day of January 1953.

(Sd.) S. TAKI BILURAMI,  
Chairman.

N. KUMARAYYA,  
Member.

. K. S. R. CHARY,  
Member.

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[No. 18/134/52-Elec.III.]

P. S. SUBRAMANIAN,  
Officer on Special Duty